

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR PROPOSED REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 150.06 and Section 150.16
Title 14, California Code of Regulations
Re: Seasonal Closures for Cabezon, Greenling, Sheephead and Rockfishes

I. Date of Initial Statement of Reasons: October 4, 2002

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: October 25, 2002
Location: Crescent City, CA

(b) Discussion Hearing: Date: December 6, 2002
Location: Monterey, CA

(c) Adoption Hearing: Date: December 6, 2002
Location: Monterey, CA

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Cabezon, greenlings, sheephead (CGS), California scorpionfish, and nearshore rockfishes are included in the aggregation of nearshore fish stocks defined in Section 1.90, Title 14, California Code of Regulations (CCR). These species all jointly occupy rock or reef nearshore habitats, and as a group, they compose the majority of landings made by the commercial live fish fishery in California. Nearshore rockfish stocks are managed by the Pacific Fishery Management Council (PFMC) as a group known as "minor nearshore rockfishes" (including California scorpionfish), under regulations promulgated by the National Marine Fisheries Service (NMFS).

CGS commercial fisheries are generally managed by the state while the nearshore rockfishes and California scorpionfish are largely regulated under federal law, although the state implements additional regulations that conform to those laws. Section 150.06 (b), Title 14, CCR, is one such law, which defines commercial rockfish and lingcod closure periods and geographic management areas based on PFMC actions. Additional regulations governing the commercial take of CGS specifically establish open and closed fishing seasons for these stocks in state waters (Sections 150.16 (a) and (b), Title 14, CCR), consistent with those seasons for rockfish and lingcod.

Changes to existing state regulations for CGS, rockfish (including California

scorpionfish) and lingcod in these two Sections are now needed as described below, largely due to changes in federal laws that will become effective January 2003. The federal regulations were developed by the PFMC at their September 10-13, 2002 meeting. They are shown in the PFMC's October 2002 newsletter in Table 4, lines 40 and 41, and Table 5, lines 34 and 35.

Re-define current state seasonal regulations which conflict with federal NFMS commercial regulations for rockfish and lingcod in 2003

Regulations in Section 150.06 (b) establish a northern and southern rockfish and lingcod management area and seasonal closure periods for each area. These closure periods will not be consistent with federal regulations for shallow and deeper nearshore rockfishes and California scorpionfish that were adopted for 2003. Consistency between state and federal regulations in state and federal waters off the coast of California is critical for the purpose of enforcement, as well as for the regulations to work effectively to keep catches within allowable harvest levels.

Additionally, the northern and southern geographic areas for rockfish and lingcod that are defined in Section 150.06 (b) are not consistent with terminology in other sections of existing state regulations (nor will they be needed once other pending state regulations are adopted). Specifically, they do not mirror sportfishing regulations currently in place in Section 27.82 (b), which establish the Northern, Central and Southern Rockfish and Lingcod Management Areas. Although technically the commercial rockfish and lingcod management areas that exist in 150.06 (b) are not in conflict with these areas defined in Section 27.82 (b), to avoid confusion and for ease of enforcement it is preferable to make the names and areas consistent between the state's sport and commercial regulations for rockfish and lingcod management areas.

Other regulations addressing geographic boundary areas for these stocks are currently under consideration by the Commission for adoption in October 2002, as part of the regulatory package to implement the Nearshore Fishery Management Plan. These regulations, if adopted, will establish four new geographic boundaries in Section 52.04, Title 14, CCR for the management of nearshore fish stocks, both sport and commercial. As a result, explicit boundary areas are not included in the proposed revisions to the language defining closure periods in Section 150.06 (b), but rather provide for the use of the geographic boundary areas defined in federal regulations, which are consistent with the existing sportfishing boundary areas of Section 27.82 (b), and proposed boundaries in Section 52.04.

Furthermore, proposed changes to Section 150 will establish a regional restricted access commercial fishery for the nearshore species for which a Nearshore Fishery Permit is required. That program, if adopted in December 2002 by the Commission, will re-define commercial management areas for nearshore fish stocks in which various nearshore fishing activities may be regulated, consistent with the areas noticed in Section 52.04 that are expected to be adopted in October.

Eliminate conflicting fishing seasons for nearshore rockfish and CGS

Current state regulations align the seasons for CGS so that commercial fishing activity in 2002 takes place in the same months as fishing for nearshore rockfish in each of the defined geographic management regions of the state (Table 1). The seasons for CGS were aligned by the state in their rulemaking action so that for the 2001 and 2002 seasons, targeting on minor nearshore fish stocks occurred at the same times. Both state seasonal closures for CGS and federal closures for rockfish were established largely to help keep catches within optimum yields (OY's) for all these species and to minimize bycatch.

In September 2002, the PFMC approved changes in rockfish seasons and catch levels for 2003 which now leave the state seasonal closure periods for CGS in Section 150.16 (a) and (b), Title 14, CCR out of alignment for the area between Point Conception and the Mexican border (Table 1). While the months of January and February have been closed commercially to the take of nearshore rockfish in 2001 and 2002 in this area, the PFMC chose to open these two months in all areas south of 40°10' N. lat (near Cape Mendocino) in 2003, and instead close the months of March and April. Unlike 2001 and 2002, this action makes fishing seasons for nearshore rockfish and lingcod identical for all areas south of 40°10' N. lat (near Cape Mendocino).

Bring CGS Regulations for the northern area [40°10' N. lat (near Cape Mendocino) to the Oregon Border] into alignment with either the 2003 nearshore rockfish season in the northern area or the CGS season in the rest of the state

Two options for management of CGS commercial stocks in the northern area are provided for the Commission's consideration (Table 1). The first alternative would establish a 12-month CGS season consistent with the year-round fishery for nearshore rockfish adopted by the PFMC for this area for 2003. Alternatively, CGS in the northern area would be aligned with the 10-month CGS season proposed throughout the rest of the state that would be consistent with nearshore rockfish seasons in those areas.

A 12-month nearshore rockfish opportunity is provided in north of Cape Mendocino as a different harvest guideline is applied to this group of species. Also, weather is a major limiting factor in accessing these fish, more so than to the south.

While the first option would prevent the bycatch of CGS during the two-month period when nearshore rockfish can be targeted, it would allow the northern fishery additional fishing opportunity for CGS compared to the fishery to the south. Restrictive commercial harvest guidelines have been applied to these fisheries beginning in 2001 (13,420 pounds for greenlings, 94,398 pounds for cabezon and 87,959 pounds for sheephead commencing with the 2002 season pursuant to Section 52.10, Title 14, CCR), and this year these fisheries were closed mid-year due to early attainment of these allowable catch levels.

As there is increased competition between fishermen to catch their portion of that allowable harvest before the fishery is closed (also known as a 'derby' fishery), having a part of the state open to CGS fishing activity while the remainder of the state is closed may prompt changes in fishery behavior and create controversy between fishermen in different areas.

Under the second option, fishing for CGS would be closed during March and April when fishing would be allowed for nearshore rockfish. This is the Department's recommended option. The catch and release of cabezon and greenlings incidental to targeted nearshore rockfish fisheries is less of a concern than incidental catch of rockfish to targeted CGS fisheries as cabezon and greenlings do not suffer from barotrauma. Since sheephead are not commercially available in the northern area, barotrauma or bycatch of this species is not an issue. This option gives fishermen statewide equal access to CGS.

TABLE 1**2002 CGS and Nearshore Rockfish Regulations**

Area	Species	Closure Period
40°10' N. lat (near Cape Mendocino) to the Oregon Border	Cabezon/ Greenlings	None
	Sheephead	March-April
	Minor Nearshore Rockfish	None
40°10' N. lat (near Cape Mendocino) to Pt. Conception (34°27' N. lat)	Cabezon/ Greenlings	March-April
	Sheephead	March-April
	Minor Nearshore Rockfish	March-April, November-December
Pt. Conception (34°27' N. lat) to the U.S.-Mexico border	Cabezon/ Greenlings	January-February
	Sheephead	January-February
	Minor Nearshore Rockfish	January-February, November-December

Option 1**2003 CGS and Nearshore Rockfish Regulations**

Area	Species	Closure Period
40°10' N. lat (near Cape Mendocino) to the Oregon Border	Cabezon/ Greenlings	None
	Sheephead	None
	Shallow and Deeper Nearshore Rockfish	None
40°10' N. lat (near Cape Mendocino) to Pt. Conception (34°27' N. lat)	Cabezon/ Greenlings	March-April
	Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April
Pt. Conception (34°27' N. lat) to the U.S.-Mexico border	Cabezon/ Greenlings	March-April
	Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April

Option 2—Department Recommended Option**2003 CGS and Nearshore Rockfish Regulations**

Area	Species	Closure Period
40°10' N. lat (near Cape Mendocino) to the Oregon Border	Cabezon/ Greenlings	March-April
	Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	None
40°10' N. lat (near Cape Mendocino) to Pt. Conception (34°27' N. lat)	Cabezon/ Greenlings	March-April
	Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April
Pt. Conception (34°27' N. lat) to the U.S.-Mexico border	Cabezon/ Greenlings	March-April
	Sheephead	March-April
	Shallow and Deeper Nearshore Rockfish	March-April

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority cited: Sections 240, 7071, 7652, 8587.1, and 8588, Fish and Game Code. Reference: Sections 240, 7652, 8585.5, 8587.1, and 8588, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:
none

- (d) Identification of Reports or Documents Supporting Regulation Change:

Pacific Council News. PFMC, Vol. 26, No.3, October 2002

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

During testimony provided on related regulatory actions affecting nearshore fish stocks to the Fish and Game Commission at their August 2, 2002 meeting in San Luis Obispo, this specific regulatory adjustment was suggested to align these seasons with federally established rockfish closures.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

Two different options on how to align the commercial seasons for CGS in the northern area to better conform to new federally-established seasons for nearshore rockfish are prepared for the Commission's consideration, and are noticed as part of this regulatory package.

Additionally, the Department identified a third option that would align both CGS and nearshore rockfish seasons in the northern area to federally-established nearshore rockfish seasons for areas south of 40°10' (near Cape Mendocino). However, since nearshore rockfish catches in the northern area are applied against a different federal OY, putting seasonal restrictions on their catch in this manner could put them at a disadvantage since Oregon fishermen also fishing against that OY would not be subject to those seasonal closures and could fish for these species in federal waters off California. At the September PFMC meeting when the federal regulations were under consideration it was understood that the regulations for rockfish in northern California would be consistent with the Oregon regulations. For these reasons, the Department did not prepare this option for the Commission's consideration as part of this regulatory action.

- (b) No Change Alternative:

See Section III (a). Leaving commercial seasons for CGS open while federal seasons for minor nearshore rockfish are closed will result in bycatch of rockfish

that cannot legally be retained and sold. Since rockfish suffer mortality and stress from hooks, traps and barotrauma, having seasons out of alignment is not desirable for the health of the resource.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States.

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, as the actions simply seek to shift various months in which fishing activities may occur or not occur.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Other Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

Informative Digest/Policy Statement Overview

Revisions to existing state regulations for rockfish (including California scorpionfish), and lingcod, and also for cabezon, greenlings, and sheephead (CGS) are needed, largely due to new federal groundfish laws that will become effective January 1, 2003. These proposed changes include 1) Re-define current state seasonal regulations which conflict with federal commercial regulations for rockfish and lingcod in 2003; 2) Eliminate conflicting fishing seasons for nearshore rockfish and CGS; and 3) Bring CGS regulations for the northern area [40° 10' N. lat (near Cape Mendocino) to the Oregon Border] into alignment with either the 2003 nearshore rockfish season in the northern area or the CGS season in the rest of the state. The Department recommends a uniform statewide commercial season for CGS.

Existing state regulations establish a northern and southern rockfish and lingcod management area and seasonal closure periods for each area. These closure periods will not be consistent with federal regulations for shallow and deeper nearshore rockfishes and California scorpionfish that were adopted for 2003. It is desirable to have consistent state and federal open and closed periods for the purpose of enforcement, as well as for the regulations to work effectively to keep catches within allowable harvest levels.

Furthermore, leaving commercial seasons for CGS open while federal seasons for minor nearshore rockfish are closed will result in bycatch of rockfish that cannot legally be retained and sold. Since rockfish suffer mortality and stress from hooks, traps and barotrauma when the law requires they be released, having seasons out of alignment is not desirable for the health of the resource. Aligned seasons allows targeting on the various nearshore fish stocks to co-occur at the same time during open periods, while during closed periods, interaction and bycatch of species that cannot be retained are minimized.